

that person did in fact rely. For purposes of this paragraph, the person who received notification of the determination shall demonstrate to the satisfaction of Customs, in writing within 30 calendar days of receipt of the notification, that the conditions set forth herein have been met. For purposes of this paragraph:

(1) A “ruling” on which a person is entitled to rely in the case of Canada must be issued pursuant to section 43.1(1) of the Customs Act (Advance Rulings) or in accordance with Departmental Memorandum 11-11-1 (National Customs Rulings) and in the case of Mexico must be issued pursuant to Article 34 of the Código Fiscal de la Federación and pursuant to Article 30 of the Ley Aduanera or the applicable provision of Mexican law related to advance rulings under Article 509 of the NAFTA; and

(2) “Consistent treatment” means the established application by the Canadian or Mexican customs administration that can be substantiated by the continued acceptance by the customs administration of the tariff classification or value of identical materials on importations of the materials into Canada or Mexico by the same importer over a period of not less than two years immediately prior to the date of signature of the Certificate of Origin for the good that is the subject of the determination referred to in paragraph (d) of this section, provided that with regard to those importations:

(i) The tariff classification or value of the materials was not the subject of a verification, review or appeal by that customs administration on the date of the determination under paragraph (d) of this section; and

(ii) The materials had not been accorded a different tariff classification or value by one or more district, regional or local offices of that customs administration on the date of the determination under paragraph (d) of this section.

(f) *Detrimental reliance.* If Customs proposes to deny preferential tariff treatment to a good pursuant to a determination made under paragraph (d) of this section, Customs shall postpone the application of the determination for a period not exceeding 90 calendar

days from the date of issuance of the determination where the U.S. importer of the good, or the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based, demonstrates to the satisfaction of Customs that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the country from which the good was exported.

[T.D. 95-68, 60 FR 46364, Sept. 6, 1995; T.D. 95-68, 61 FR 1829, Jan. 24, 1996]

Subpart H—Penalties

§ 181.81 Applicability to NAFTA transactions.

Except as otherwise provided in § 181.82 of this part, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the Customs and related laws and regulations shall also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the NAFTA.

§ 181.82 Exceptions to application of penalties.

(a) *General.* A U.S. importer who makes a corrected declaration under § 181.21(b) of this part shall not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made. In addition, civil or administrative penalties provided for under the U.S. Customs laws and regulations shall not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 181.11(d) of this part with respect to the making of an incorrect certification.

(b) “*Voluntarily*” defined—(1) *General.* For purposes of paragraph (a) of this section, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(i) Done before the commencement of a formal investigation;

(ii) Done before any of the events specified in §162.74(i) of this chapter have occurred;

(iii) Done within 30 calendar days after either the U.S. importer with respect to a declaration that an imported good qualified as an originating good, or the U.S. exporter or producer with respect to a certification pertaining to a good exported to Canada or Mexico, had reason to believe that the declaration or certification was not correct;

(iv) Accompanied by a written statement setting forth the information specified in paragraph (b)(3) of this section; and

(v) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties in accordance with paragraph (b)(5) of this section.

(2) *Cases involving fraud.* Notwithstanding paragraph (b)(1) of this section, a person who acted by means of fraud in making an incorrect declaration or certification may not make a voluntary correction thereof. For purposes of this paragraph (b)(2), the term “fraud” shall have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(3) *Written statement.* For purposes of paragraph (a) of this section, each corrected declaration or notification of an incorrect certification shall be accompanied by a written statement which:

(i) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(ii) Identifies each import or export transaction affected by the incorrect declaration or certification with reference to each port of importation or exportation and the approximate date of each importation or exportation. A U.S. producer who provides written notification that certain information in a Certificate of Origin is incorrect and who is unable to identify the specific export transactions under this paragraph shall provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(iii) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(iv) Sets forth, to the best of the person’s knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as Customs may permit in order for the person to obtain the information or data.

(4) *Substantial compliance.* For purposes of this section, a person shall be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (b)(3) of this section, provided that:

(i) Customs is satisfied that the information was provided before the commencement of a formal investigation; and

(ii) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (b)(3) of this section.

(5) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration shall tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as Customs may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(6) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and the regulations issued thereunder.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 99–64, 64 FR 43267, Aug. 10, 1999]